

1 JAMES B. GILPIN, Bar No. 151466
James.Gilpin@bbklaw.com
2 MATTHEW L. GREEN, Bar No. 227904
Matthew.Green@bbklaw.com
3 BEST BEST & KRIEGER LLP
655 W. Broadway, 15th Floor
4 San Diego, CA 92101
Telephone: (619) 525-1300
5 Facsimile: (619) 233-6118

6 Attorneys for Defendant
SUPERIOR COURT OF CALIFORNIA,
7 COUNTY OF SAN DIEGO (erroneously
sued as SUPERIOR COURT OF SAN
8 DIEGO COUNTY)

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12 CALIFORNIA COALITION FOR
FAMILIES AND CHILDREN, et al.,
13 Plaintiffs,
v.
14 SAN DIEGO COUNTY BAR
ASSOCIATION, et al.,
15 Defendants.

Case No. 13-cv-1944-CAB (BLM)
Judge: Hon. Cathy Ann Bencivengo

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SANCTIONS

16 Date: December 19, 2013
17 Time: 3:30 p.m.
Courtroom: 4C

18 **[NO ORAL ARGUMENT UNLESS
REQUESTED BY COURT]**

19 Complaint Filed: August 20, 2013

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
I. INTRODUCTION	1
II. LEGAL STANDARD.....	3
III. ARGUMENT.....	5
A. PLAINTIFFS’ COMPLAINT VIOLATES RULE 11 AND THE LOCAL CIVIL RULES ON NUMEROUS GROUNDS.....	5
1. CCFC and Lexevia’s Attempt To Proceed Without Counsel Violates Rule 11 and Local Civil Rule 83.3(k)	5
2. Lexevia’s Attempt To Pursue Claims As A Suspended Corporation Violates Rule 11	7
3. Plaintiffs’ Inclusion Of The Home Addresses Of Four Judicial Officers In Their Complaint Violates Rule 11 And This Court’s General Order 550.....	7
4. Plaintiffs’ Filing Of A 1,300-Page Complaint In Violation Of Rule 8 Fails To Comply With Rule 11	8
5. Plaintiffs’ Claims Against The Superior Court And Its Judges And Employees Are Unwarranted Under The Eleventh Amendment And Thus In Violation Rule 11.....	9
6. The Clear Application Of Judicial And Quasi-Judicial Immunity Renders Plaintiffs’ Claims Against Judicial Officers And Mr. Roddy In Violation Of Rule 11	10
7. Plaintiffs’ Presentation Of The 13 Civil Rights Claims Relating To The So-Called “Stuart Assault” Violates Rule 11	11
8. Plaintiffs’ Civil Rights Claims Concerning Stuart’s Dissolution Proceeding Violate Rule 11	14
9. Plaintiffs’ Lanham Act Claim For False Advertising Is Unwarranted Under Existing Law And Thus Violates Rule 11	15
10. Plaintiffs’ Assertion Of RICO Claims Against The Superior Court Defendants Violates Rule 11	16
11. Plaintiffs’ Pursuit Of Claims For Prospective Relief Without Standing Violates Rule 11	17
B. PLAINTIFFS’ VIOLATIONS OF RULE 11 WARRANT THE IMPOSITION OF SANCTIONS	18
IV. CONCLUSION.....	19

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Cases

Ashelman v. Pope,
793 F.2d 1072 (9th Cir. 1986)10

B.C. v. Plumas Unified Sch. Dist.,
192 F.3d 1260 (9th Cir. 1999)18

Barrus v. Sylvania,
55 F.3d 468 (9th Cir. 1995)16

Blake v. Dierdorff,
856 F.2d 1365 (9th Cir. 1988)16

Estate of Brooks v. U.S.,
197 F.3d 1245 (9th Cir. 1999)11

Business Guides, Inc. v. Chromatic Communications Enters.,
498 U.S. 533 (1991).....4

Cafasso v. Gen. Dynamics C4 Sys.,
637 F.3d 1047 (9th Cir. 2011)9

Canlis v. San Joaquin Sheriff's Posse Comitatus,
641 F.2d 711 (9th Cir. 1981) 11, 13

In re Castillo,
297 F.3d 940 (9th Cir. 2002)10

Cerrato v. San Francisco Cmty. Coll. Dist.,
26 F.3d 968 (9th Cir. 1994)11

Chapman & Cole v. Itel Container Int'l B.V.,
865 F.2d 676 (5th Cir. 1989)17

City of Los Angeles v. Lyons,
461 U.S. 95 (1983).....17

Color-Vue, Inc. v. Abrams,
52 Cal. Rptr. 2d 443 (Ct. App. 1996)7

1	<i>Cooter & Gell v. Hartmarx Corp.</i> ,	
2	496 U.S. 384 (1990).....	3
3	<i>Dist. of Columbia Court of Appeals v. Feldman</i> ,	
4	460 U.S. 462 (1983).....	15
5	<i>Duerst v. State of Cal.</i> ,	
6	2013 U.S. Dist. LEXIS 24827 (E.D. Cal. Feb. 22, 2013).....	9, 10
7	<i>Eastway Constr. Corp. v. City of New York</i> ,	
8	762 F.2d 243 (2nd Cir. 1985).....	4
9	<i>Exxon Mobil Corp. v. Saudi Basic Indus. Corp.</i> ,	
10	544 U.S. 280 (2005).....	15
11	<i>Forrett v. Richardson</i> ,	
12	112 F.3d 416 (9th Cir. 1997)	13
13	<i>Garcia v. Strayhord</i> ,	
14	2013 U.S. Dist. LEXIS 135998 (S.D. Cal. Sep. 23, 2013) (Benitez, J.)	13
15	<i>Gaskell v. Weir</i> ,	
16	10 F.3d 626 (9th Cir. 1993)	18
17	<i>Gjurovich v. State of Cal.</i> ,	
18	2010 U.S. Dist. LEXIS 118797 (E.D. Cal. Oct. 26, 2010).....	10
19	<i>Greater Los Angeles Council of Deafness, Inc. v. Zolin</i> ,	
20	812 F.2d 1103 (9th Cir. 1987)	9
21	<i>Hacienda Valley Mobile Estates v. City of Morgan Hill</i> ,	
22	353 F.3d 651 (9th Cir. 2003)	12
23	<i>Harris v. RHH P'rs, LP</i> ,	
24	2009 Del. Ch. LEXIS 42 (Del. Ch. Apr. 3, 2009)	5
25	<i>Karim-Panahi v. Los Angeles Police Dept.</i> ,	
26	839 F.2d 621 (9th Cir. 1988)	11
27	<i>Kruse v. Hawaii</i> ,	
28	68 F.3d 331 (9th Cir. 1995)	17
	<i>Long v. County of Los Angeles</i> ,	
	442 F.3d 1178 (9th Cir. 2006)	11

1	<i>Los Angeles County Ass'n of Env'tl. Health Specialists v. Lewin,</i>	
2	215 F.Supp.2d 1071 (C.D. Cal. 2002)	9
3	<i>Lujan v. Defenders of Wildlife,</i>	
4	504 U.S. 555 (1992).....	17
5	<i>Mahaley v. Mapes,</i>	
6	2013 U.S. Dist. LEXIS 65897 (C.D. Cal. Apr. 16, 2013).....	9
7	<i>Merco Constr. Eng'rs, Inc. v. Mun. Ct.,</i>	
8	147 Cal. Rptr. 631 (Cal. 1978).....	5
9	<i>Mir v. Little Company of Mary Hospital,</i>	
10	844 F.2d 646 (9th Cir. 1988)	14
11	<i>Mireles v. Waco,</i>	
12	502 U.S. 9 (1991)	10
13	<i>Monell v. New York City Dep't of Soc. Servs,</i>	
14	436 U.S. 658 (1978).....	13
15	<i>Moore v. Brewster,</i>	
16	96 F.3d 1240 (9th Cir. 1996)	10
17	<i>Morales v. Los Angeles,</i>	
18	214 F.3d 1151 (9th Cir. 2000)	12
19	<i>Morrison v. Jones,</i>	
20	607 F.2d 1269 (9th Cir. 1979)	10
21	<i>Mullis v. United States Bankr. Ct.,</i>	
22	828 F.2d 1385 (9th Cir. 1987)	10
23	<i>Occupational-Urgent Health Sys., Inc. v. Sutro & Co.,</i>	
24	711 F. Supp. 1016 (E.D. Cal. 1989)	16
25	<i>Odom v. Microsoft Corp.,</i>	
26	486 F.3d 541 (9th Cir. 2007)	16
27	<i>Oliver v. Placer Superior Court,</i>	
28	2013 U.S. Dist. LEXIS 82627 (E.D. Cal. Jun. 10, 2013).....	9, 10
	<i>Paradise Creations, Inc. v. UV Sales, Inc.,</i>	
	315 F.3d 1304 (Fed. Cir. 2003)	5

1	<i>Patterson v. Aiken,</i>	
2	841 F.2d 386 (11th Cir. 1988)	3
3	<i>Portman v. County of Santa Clara,</i>	
4	995 F.2d 898 (9th Cir. 1993)	11
5	<i>RK Ventures, Inc. v. City of Seattle,</i>	
6	307 F.3d 1045 (9th Cir. 2002)	11
7	<i>Robbins v. P'ship for Bank Capital, L.P.,</i>	
8	2010 Del. Ch. LEXIS 167 (Del. Ch. Jul. 23, 2010).....	5
9	<i>Rooker v. Fidelity Trust Co.,</i>	
10	263 U.S. 413 (1923).....	15
11	<i>Samuel v. Michaud,</i>	
12	980 F. Supp. 1381 (D. Idaho 1996), <i>aff'd</i> , 129 F.3d 127 (9th Cir. 1997)	15
13	<i>Sekerke v. Kemp,</i>	
14	2013 U.S. Dist. LEXIS 35041	11
15	<i>Simmons v. Sacramento County Superior Court,</i>	
16	318 F.3d 1156 (9th Cir. 2003)	9
17	<i>Smith v. Montoro,</i>	
18	648 F.2d 602 (9th Cir. 1981)	15
19	<i>Stump v. Sparkman,</i>	
20	435 U.S. 349 (1978).....	10
21	<i>Sun Sav. & Loan Ass'n v. Dierdorff,</i>	
22	825 F.2d 187 (9th Cir. 1987)	16
23	<i>Taylor v. Regents of Univ. of Cal.,</i>	
24	993 F.2d 710 (9th Cir. 1993)	12
25	<i>Townsend v. Holman Consulting Corp.,</i>	
26	914 F.2d 1136 (9th Cir. 1990)	3
27	<i>U.S. v. Lockheed-Martin Corp.,</i>	
28	328 F.3d 374 (7th Cir. 2003)	8
	<i>Usher v. City of Los Angeles,</i>	
	828 F.2d 556 (9th Cir. 1987)	12

1 *Zaldivar v. City of Los Angeles*,
2 780 F.2d 823 (9th Cir. 1986)4
3 **Statutes**
4 15 U.S.C. § 1125(a)..... 2, 15, 16
5 42 U.S.C. § 1983 *passim*
6 42 U.S.C. § 1985 11, 13
7 42 U.S.C. § 1986 11, 13
8 Cal. Code Civ. Proc. § 335.1.....12
9 Cal. Rev. & Tax. Code § 197197
10 Cal. Rev. & Tax. Code § 233017
11
12
13 **Other Authorities**
14 Fed. Rule Civ. P. 11 *passim*
15 Local Civil Rule 83.1 1, 4, 18
16 Local Civil Rule 83.3(k)5, 6
17 Local Rule 5.1(j)(1).....5, 6
18
19
20
21
22
23
24
25
26
27
28

1 Defendant Superior Court of California, County of San Diego, erroneously
2 sued as Superior Court of San Diego County (“Superior Court”), respectfully
3 submits the following memorandum of points and authorities in support of its
4 motion for sanctions against Plaintiffs California Coalition for Families and
5 Children (“CCFC”), Lexevia, PC (“Lexevia”), and Colbern C. Stuart (“Stuart”)
6 (collectively, “Plaintiffs”) under Federal Rule of Civil Procedure 11 and Local Civil
7 Rule 83.1.

8 I.

9 **INTRODUCTION**

10 On August 20, 2013, Plaintiffs filed a Complaint totaling approximately
11 1,300 pages in length and purporting to assert 35 claims against 49 defendants that
12 Plaintiffs describe as being a part of the “family law community.” (Compl. ¶ 60.)
13 The “central subject” of the Complaint relates to a family law seminar hosted by the
14 San Diego County Bar Association in April 2010, at which Stuart was arrested
15 pursuant to an outstanding bench warrant. (*See* Compl. ¶¶ 114, 135; *see also*
16 Request for Judicial Notice (“RJN”), Ex. A) The Complaint also purports to
17 challenge the overall “family law system” based on Stuart’s dealings therewith in
18 his own dissolution proceeding in 2008 and 2009. (*See* Compl. ¶¶ 77, 78.8, 237-
19 245.)

20 Plaintiffs have named (1) the Superior Court, (2) the Honorable Robert J.
21 Trentacosta, Presiding Judge of the Superior Court, erroneously sued as Robert J.
22 Trentacosta, (3) Michael M. Roddy, Executive Officer of the Superior Court, (4)
23 the Honorable Lisa Schall, Judge of the Superior Court, (5) the Honorable Lorna A.
24 Alksne, Judge of the Superior Court, (6) the Honorable Christine K. Goldsmith,
25 Judge of the Superior Court, (7) the Honorable Jeannie Lowe, Commissioner of the
26 Superior Court (Ret.), (8) the Honorable William H. McAdam, Jr., Judge of the
27 Superior Court, (9) the Honorable Edlene C. McKenzie, Commissioner of the
28 Superior Court, and/or (10) the Honorable Joel R. Wohlfeil, Judge of the Superior

1 Court (collectively, “Superior Court Defendants”) as defendants in 32 of the 35
2 claims in the Complaint, which consist of claims for alleged federal civil rights
3 violations, false advertising under the Lanham Act, violation of the Racketeer
4 Influenced and Corrupt Organizations Act (“RICO”), and equitable relief. (Compl.
5 ¶¶ 142-176, 180-257, 260-267, 345-374, 392-396.) Such claims lack evidentiary
6 support, are not warranted by existing law, and have been presented to harass the
7 Superior Court Defendants in violation of Rule 11.

8 Plaintiffs’ violations of Rule 11 include: (1) CCFC and Lexevia’s attempt to
9 proceed *in propria persona* in violation of the laws of the states in which they were
10 organized and the Local Civil Rules; (2) Lexevia’s pursuit of claims without the
11 capacity to do so as a suspended corporation; (3) Plaintiffs’ inclusion of the
12 residential addresses of defendant judicial officers in the Complaint; (4) Plaintiffs’
13 filing of a frivolous, 1,300-page complaint; (5) Plaintiffs’ assertion of claims
14 against the Superior Court and its judges and employees in their official capacities
15 despite the clear application of Eleventh Amendment immunity; (6) Plaintiffs’
16 filing of claims against judicial officers and Mr. Roddy in the face of judicial and
17 quasi-judicial immunity; (7) Plaintiffs’ presentation of civil rights claims relating to
18 the so-called “Stuart Assault” at the family law seminar that ostensibly lack
19 evidentiary and legal support and are barred by the statute of limitations; (8)
20 Plaintiffs’ pursuit of civil rights claims concerning Stuart’s dissolution proceeding
21 that are also untimely and barred by the *Rooker-Feldman* doctrine; (9) Plaintiffs’
22 frivolous assertion of a false advertising claim, given the Superior Court
23 Defendants do not advertise or sell services and are not commercial competitors of
24 anyone; (10) the filing of Plaintiffs’ factually and legally unsupportable RICO
25 claims; and (11) Plaintiffs’ presentation of claims for prospective relief without
26 standing to do so.

27 ///

28 ///

1 Due to the length of Plaintiffs' Complaint and the number of claims set forth
2 therein, the Superior Court Defendants were forced to incur \$10,675.00 in
3 attorneys' fees to defend the action through preparation of a motion to dismiss.
4 (Doc. No. 16.) Accordingly, the Court should grant the Superior Court's motion
5 for sanctions and award reasonable attorneys' fees in the amount of \$10,675.00.

6 II.

7 **LEGAL STANDARD**

8 Rule 11(b) of the Federal Rules of Civil Procedure provides in relevant part:

9 By presenting to the court a pleading ... an attorney or
10 unrepresented party certifies that to the best of the
11 person's knowledge, information and belief, formed after
an inquiry reasonable under the circumstances:

12 (1) it is not being presented for any improper purpose,
13 such as to harass, cause unnecessary delay, or needlessly
increase the cost of litigation;

14 (2) the claims ... are warranted by existing law or by a
15 nonfrivolous argument for extending, modifying, or
reversing existing law or for establishing new law; [and]

16 (3) the factual contentions have evidentiary support or, if
17 specifically so identified, will likely have evidentiary
support after a reasonable opportunity for further
investigation or discovery[.]

18 "It is now clear the central purpose of Rule 11 is to deter baseless filings in
19 District Court and thus ... streamline the administration and procedure of the
20 federal courts." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 392 (1990)
21 (superseded by statute on other grounds). A pleading need not be frivolous as a
22 whole to violate Rule 11(b). Rule 11 is violated "where it is shown that the Rule
23 was violated as to a portion of a pleading, even though it was not violated as to
24 other portions." *Patterson v. Aiken*, 841 F.2d 386, 387 (11th Cir. 1988). A
25 violation of Rule 11 also occurs upon the frivolous joinder of parties. *Townsend v.*
26 *Holman Consulting Corp.*, 914 F.2d 1136, 1141 (9th Cir. 1990).

27 Rule 11 is violated "if the paper filed in district court and signed by an
28 attorney or an unrepresented party is frivolous, legally unreasonable, or without

1 factual foundation, even if the paper was not filed in subjective bad faith.”
2 *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 831 (9th Cir. 1986) (overruled on
3 other grounds by *Cooter & Gell*). The Rule 11 certification imposes “an
4 affirmative duty to conduct a reasonable inquiry into the facts and the law before
5 filing[.]” *Business Guides, Inc. v. Chromatic Communications Enters.*, 498 U.S.
6 533, 550 (1991). A pleading is not warranted by law under Rule 11(b)(2) where it
7 is “patently clear that a claim has absolutely no chance of success under the existing
8 precedents, and ... no reasonable argument can be advanced to extend, modify or
9 reverse the law as it stands” *Eastway Constr. Corp. v. City of New York*, 762
10 F.2d 243, 254 (2nd Cir. 1985). The applicable standard to determine whether Rule
11 is violated is “one of reasonableness under the circumstances.” *Business*
12 *Guides*, 498 U.S. at 550.

13 Where a court determines that Rule 11 has been violated, “the court may
14 impose an appropriate sanction on any attorney, law firm, or party that violated the
15 rule or is responsible for the violation.” Fed. R. Civ. P. 11(c)(1). The nature of the
16 sanction is “limited to what suffices to deter repetition of the conduct or comparable
17 conduct by others similarly situated.” Fed. R. Civ. P. 11(c)(4). “The sanction may
18 include nonmonetary directives; an order to pay a penalty into court; or, if imposed
19 on motion and warranted for effective deterrence, an order directing payment to the
20 movant of part or all of the reasonable attorney’s fees and other expenses directly
21 resulting from the violation.” Fed. R. Civ. P. 11(c)(4).

22 The Local Civil Rules for this Court also provide for the imposition of
23 sanctions under certain enumerated events. Local Civil Rule 83.1 states in pertinent
24 part:

25 a. Failure of counsel or of any party to comply with these
26 rules, with the Federal Rules of Civil or Criminal
27 Procedure, or with any order of the court may be ground
28 for imposition by the court of any and all sanctions
authorized by statute or rule or within the inherent power
of the court, including, without limitation, dismissal of
any actions, entry of default, finding of contempt,

1 imposition of monetary sanctions or attorneys' fees and
2 costs, and other lesser sanctions.

3 b. For violations of these Local Rules or of a specific
4 court order, the court may, in imposing monetary
5 sanctions, order that the monetary sanctions be paid to the
6 nonappropriated fund of the court.

7 **III.**

8 **ARGUMENT**

9 **A. PLAINTIFFS' COMPLAINT VIOLATES RULE 11 AND THE**
10 **LOCAL CIVIL RULES ON NUMEROUS GROUNDS**

11 1. CCFC and Lexevia's Attempt To Proceed Without Counsel
12 Violates Rule 11 and Local Civil Rule 83.3(k).

13 CCFC and Lexevia's capacity to sue is determined by the law of the state in
14 which each corporation was organized. Fed. R. Civ. P. 17(b)(2); *Paradise*
15 *Creations, Inc. v. UV Sales, Inc.*, 315 F.3d 1304, 1307 (Fed. Cir. 2003). CCFC's
16 capacity to sue is therefore governed by Delaware law, while Lexevia's capacity to
17 sue is dictated by California law. (Compl. at 1; RJN, Exs. B-C.) Under the law of
18 both states, a corporation must appear in an action through counsel and cannot
19 proceed *in propria persona*. *Robbins v. P'ship for Bank Capital, L.P.*, 2010 Del.
20 Ch. LEXIS 167, at *2 (Del. Ch. Jul. 23, 2010); *Harris v. RHH P'rs, LP*, 2009 Del.
21 Ch. LEXIS 42, at *6 (Del. Ch. Apr. 3, 2009); *Merco Constr. Eng'rs, Inc. v. Mun.*
22 *Ct.*, 147 Cal. Rptr. 631, 635 (Cal. 1978). Local Civil Rule 83.3(k) also requires
23 corporations to appear through an attorney.

24 Civil Local Rule 5.1(j)(1) requires that the title page of every pleading
25 include the address and telephone number of the attorney appearing for a party or of
26 an individual appearing *pro se*. The title page of the Complaint in this action
27 identifies Stuart and Dean Browning Webb, a Washington attorney. (Compl. at 1.)
28 Neither Mr. Webb nor Stuart, however, are counsel for CCFC or Lexevia.

As to Mr. Webb, although the title page to the Complaint indicates a *pro hac*
vice application is pending, no such application is reflected on the Court's docket.

1 Mr. Webb also did not sign the Complaint. (*See* Compl. at 171.) Indeed, Mr.
2 Webb informed the Superior Court’s counsel on August 26, 2013, that Stuart used
3 his name on the Complaint without permission. (Doc. No. 16, Attachment 3
4 (Nesthus Decl.) ¶ 4.)

5 With regard to Stuart, the Complaint alleges he is an attorney licensed and
6 admitted to practice in California, Arizona, and Nevada “at all relevant times,” has
7 been admitted to practice law in multiple federal districts, assisted with preparing a
8 petition for certiorari in a separate action in June 2013, and is “an officer of the
9 courts.” (Compl. ¶¶ 3, 102, 103, Ex. 2.) According to Lexevia’s website, Stuart
10 also is the founder and CEO of Lexevia, worked at the United States Attorneys’
11 Office in the District of Columbia prosecuting felony crimes, and “has been a
12 Partner and Associate at several large international firms, including Paul Hastings;
13 Katten, Muchin, Rosenman; Brobeck, Phleger, & Harrison; and Heller Ehrman.”
14 (Green Decl., Ex. 1.) Stuart, however, was disbarred in California effective
15 December 2012, and his licenses in Arizona and Nevada are both suspended. (RJN,
16 Exs. D-H.) Stuart therefore cannot serve as counsel for any party in this case.¹

17 Given neither CCFC and Lexevia are represented by counsel in this matter,
18 their claims are clearly unwarranted by existing law and accordingly in violation of
19 Rule 11(b)(2), as well as Local Civil Rule 83.3(k). Plaintiffs’ erroneous
20 identification of Mr. Webb as counsel and statement that he has a *pro hac vice*
21 application pending also violate Rule 11(b)(1) and (b)(3) and Civil Local Rule
22 5.1(j)(1).

23 ///

24 ///

25 ///

26

27 ¹ While Stuart filed the Complaint *pro se*, he is certainly no ordinary *pro se* plaintiff, given
28 he was admitted to practice law in California for 17 years and was a partner at multiple major law
firms.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Lexevia’s Attempt To Pursue Claims As A Suspended Corporation Violates Rule 11.

Under California law, a suspended corporation lacks capacity to sue. *Color-Vue, Inc. v. Abrams*, 52 Cal. Rptr. 2d 443, 446 (Ct. App. 1996); *see also* Cal. Rev. & Tax. Code § 23301; Cal. Corps. Code § 2205. Indeed, anyone who purports to exercise the rights and powers of a suspended corporation is guilty of a misdemeanor. Cal. Rev. & Tax. Code § 19719. Given Lexevia is a suspended corporation, (RJN, Ex. C), its claims in this action are not warranted by existing law and therefore violate Rule 11(b)(2).

3. Plaintiffs’ Inclusion Of The Home Addresses Of Four Judicial Officers In Their Complaint Violates Rule 11 And This Court’s General Order 550.

For no ostensible purpose other than harassment, Plaintiffs’ Complaint contains the residential addresses of Judges Trentacosta, Schall, Alksne, and Wohlfeil.² (Compl. ¶¶ 11, 22, 23, 29.) Pursuant to Section 1(h)(5) of the Court’s General Order 550, parties must refrain from including home addresses in all pleadings and documents filed with the Court.

Not only did Plaintiffs violate General Order 550, but Plaintiffs refused to take any steps to correct their violation. Instead, Plaintiffs applied ex parte on August 26, 2013, for an order excusing their compliance with the Superior Court’s counsel’s demand that the addresses be removed from the Complaint, claiming there was no violation of General Order 550. (Doc. No. 4, at 5:24-6:1, 15:9-26.) Plaintiffs’ ex parte application even acknowledges that as of the prior day, “the VERIFIED COMPLAINT containing the residential addresses of several Defendants ha[d] been viewed over 119,296 times [on an Internet blog], and this number is progressing at a rate of about 20,000 views per day.” (Doc. No. 4, at 6:18-7:5.)

² The Complaint also contains the home addresses of Chief Justice Tani G. Cantil-Sakauye and Lawrence J. Simi, Chairperson for the Commission on Judicial Performance. (Compl. ¶¶ 17, 19.)

1 Recognizing that the Complaint contains confidential information,
2 particularly the home addresses of judicial officers, the Court issued a minute order
3 on August 26, 2013, directing that the Complaint be sealed. (Doc. No. 5; *see also*
4 Doc. No. 9.) Without first obtaining leave of this Court, Plaintiffs thereafter filed a
5 redacted complaint, which continued to identify the city in which the judges reside.
6 (Doc. Nos. 8, 9.) On September 13, 2013, the Court accordingly entered a minute
7 order directing that the redacted complaint be sealed. (Doc. No. 9.) Indeed,
8 General Order 550 only permits the inclusion of the city in documents filed in
9 criminal cases and only if a home address must be included.

10 Based upon Plaintiffs' conduct, it is clear the purpose of including home
11 addresses in the Complaint was to harass and intimidate the defendant judicial
12 officers. In addition to violating General Order 550, Plaintiffs' inclusion of the
13 residential addresses therefore also violates Rule 11(b)(1).

14 4. Plaintiffs' Filing Of A 1,300-Page Complaint In Violation Of
15 Rule 8 Fails To Comply With Rule 11.

16 Federal Rule of Civil Procedure 8 "requires parties to make their pleadings
17 straightforward, so that judges and adverse parties need not try to fish a gold coin
18 from a bucket of mud." *U.S. v. Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th
19 Cir. 2003) (dismissing 155-page complaint with prejudice that was so "sprawling"
20 as to be "incomprehensible"). The Ninth Circuit has opined:

21 ... [W]e have never held – and we know of no authority
22 supporting the proposition – that a pleading may be of
23 unlimited length and opacity. Our cases instruct
24 otherwise. *See, e.g., McHenry v. Renne*, 84 F.3d 1172,
25 1177-80 (9th Cir. 1996) (upholding a Rule 8(a) dismissal
26 of a complaint that was "argumentative, prolix, replete
27 with redundancy, and largely irrelevant"); *Hatch v.*
28 *Reliance Ins. Co.*, 758 F.2d 409, 415 (9th Cir. 1985)
(upholding a Rule 8(a) dismissal of a complaint that
"exceeded 70 pages in length, [and was] confusing and
conclusory"); *Nevijel v. North Coast Life Ins. Co.*, 651
F.2d 671, 674 (9th Cir. 1981) (holding that Rule 8(a) is
violated when a complaint is excessively "verbose,
confusing and almost entirely conclusory"); *Schmidt v.*
Herrmann, 614 F.2d 1221, 1224 (9th Cir. 1980)

1 (upholding a Rule 8(a) dismissal of “confusing,
2 distracting, ambiguous, and unintelligible pleadings”). ...
3 Rule 8(a) has “been held to be violated by a pleading that
4 was needlessly long, or a complaint that was highly
5 repetitious, or confused, or consisted of incomprehensible
6 rambling.” [Citation.] Our district courts are busy
7 enough without having to penetrate a tome approaching
8 the magnitude of *War and Peace* to discern a plaintiff’s
9 claims and allegations.”

6 *Cafasso v. Gen. Dynamics C4 Sys.*, 637 F.3d 1047, 1058 (9th Cir. 2011) (denial of
7 request to file 773-page proposed amended complaint).

8 The Complaint in this action totals approximately 1,300 pages with all of its
9 voluminous exhibits. Similar to the authorities referenced above, the Complaint
10 consists of “incomprehensible rambling” and requires the defendants and the Court
11 “to penetrate a tome approaching the magnitude of *War and Peace* to discern [the]
12 plaintiff’s claims and allegations.” *Cafasso*, 637 F.3d at 1058. Additionally, the 32
13 claims asserted against the various Superior Court Defendants are “confusing and
14 conclusory.” *Id.*; (Compl. ¶¶ 141-257, 260-267, 345-396). Given Plaintiffs’ filing
15 of the Complaint constitutes nothing more than harassment of the Superior Court
16 Defendants, Plaintiffs’ presentation of the same violates Rule 11(b)(3).

17 5. Plaintiffs’ Claims Against The Superior Court And Its Judges
18 And Employees Are Unwarranted Under The Eleventh
19 Amendment And Thus In Violation Rule 11.

20 It is well-settled in the Ninth Circuit that California superior courts are
21 considered arms of the state and therefore enjoy Eleventh Amendment immunity.
22 *Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir.
23 2003); *Greater Los Angeles Council of Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110
24 (9th Cir. 1987); *Los Angeles County Ass’n of Env’tl. Health Specialists v. Lewin*,
25 215 F.Supp.2d 1071, 1078 (C.D. Cal. 2002); *Duerst v. State of Cal.*, 2013 U.S.
26 Dist. LEXIS 24827, at *4-5 (E.D. Cal. Feb. 22, 2013). It also well-established that
27 Eleventh Amendment immunity bars claims against judges and court employees in
28 their official capacities. *Simmons*, 318 F.3d at 1161; *Oliver v. Placer Superior*
Court, 2013 U.S. Dist. LEXIS 82627, at *9-10 (E.D. Cal. Jun. 10, 2013); *Mahaley*

1 v. *Mapes*, 2013 U.S. Dist. LEXIS 65897, at * 19 (C.D. Cal. Apr. 16, 2013).
2 Because the Superior Court and its judges and employees in their official capacities
3 are immune from Plaintiffs' claims under the Eleventh Amendment, such claims
4 are not warranted by existing law and therefore violate Rule 11(b)(2).

5 6. The Clear Application Of Judicial And Quasi-Judicial Immunity
6 Renders Plaintiffs' Claims Against Judicial Officers And Mr.
7 Roddy In Violation Of Rule 11.

8 Judges are generally immune from civil liability for acts performed in their
9 judicial capacity. *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (per curiam); *Stump v.*
10 *Sparkman*, 435 U.S. 349, 362 (1978); *Moore v. Brewster*, 96 F.3d 1240, 1243 (9th
11 Cir. 1996); *Mullis v. United States Bankr. Ct.*, 828 F.2d 1385, 1394 (9th Cir. 1987);
12 *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc); see also *Oliver*,
13 2013 U.S. Dist. LEXIS 82627, at *9-10; *Duerst*, 2013 U.S. Dist. LEXIS 24827, at
14 *5-6; *Gjurovich v. State of Cal.*, 2010 U.S. Dist. LEXIS 118797, at *7 (E.D. Cal.
15 Oct. 26, 2010). Non-judicial officers also enjoy absolute quasi-judicial immunity
16 when they perform tasks that are an integral part of the judicial process. *In re*
17 *Castillo*, 297 F.3d 940, 947 (9th Cir. 2002); *Morrison v. Jones*, 607 F.2d 1269,
18 1273 (9th Cir. 1979).

19 Aside from those claims relating to the April 2010 bar event incident, the
20 remainder of Plaintiffs' claims concern Plaintiffs' conclusory allegation that family
21 court judges fail to follow the law, particularly in connection with Child Custody
22 Evaluators and Stuart's own dissolution proceeding. (See Compl. ¶¶ 77, 78.8, 237-
23 245.) Because such conduct by the judicial defendants is clearly protected by
24 judicial immunity, and Mr. Roddy's alleged acts relating thereto are subject to
25 quasi-judicial immunity, (see Compl. ¶ 8), Plaintiffs' claims against these
26 defendants are unwarranted under existing law and in violation of Rule 11(b)(2).

26 ///

27 ///

28 ///

1 7. Plaintiffs’ Presentation Of The 13 Civil Rights Claims Relating
2 To The So-Called “Stuart Assault” Violates Rule 11.

3 The Complaint purports to assert a total of 13 civil rights claims against
4 certain Superior Court Defendants relating to the so-called “Stuart Assault” at the
5 April 2010 bar association seminar – eight claims under 42 U.S.C. § 1983, four
6 claims under 42 U.S.C. § 1985, and one claim under 42 U.S.C. § 1986. (Compl. ¶¶
7 142-150, 158-176, 180-215.) To state a claim under Section 1983, a plaintiff must
8 allege “that a right secured by the Constitution or the laws of the United States was
9 violated[.]” *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).
10 “Causation is, of course, a required element of a § 1983 claim.” *Estate of Brooks v.*
11 *U.S.*, 197 F.3d 1245, 1248 (9th Cir. 1999).

12 To establish a Section 1985(1) claim, a plaintiff must establish that two or
13 more individuals conspired to prevent him or her from assuming or discharging
14 duties as a public officer. 42 U.S.C. § 1985(1); *Canlis v. San Joaquin Sheriff’s*
15 *Posse Comitatus*, 641 F.2d 711, 717 (9th Cir. 1981). Sections 1985(2) and (3)
16 prohibit conspiracies to interfere with the civil rights of others. *Karim-Panahi v.*
17 *Los Angeles Police Dept.*, 839 F.2d 621, 626 (9th Cir. 1988). Claims under Section
18 1985(2) and (3) “must allege facts to support the allegation that defendants
19 conspired together. A mere allegation of conspiracy without factual specificity is
20 insufficient.” *Id.* An allegation of racial or class-based discrimination is also
21 required to state a claim for relief under either subsection. *See RK Ventures, Inc. v.*
22 *City of Seattle*, 307 F.3d 1045, 1056 (9th Cir. 2002); *Portman v. County of Santa*
23 *Clara*, 995 F.2d 898, 909 (9th Cir. 1993).

24 Section 1986 “authorizes a remedy against state actors who have negligently
25 failed to prevent a conspiracy that would be actionable under § 1985.” *Cerrato v.*
26 *San Francisco Cmty. Coll. Dist.*, 26 F.3d 968, 971 n.7 (9th Cir. 1994). A
27 conspiracy under § 1985 is therefore a prerequisite to a valid claim under § 1986.
28 *Sekerke v. Kemp*, 2013 U.S. Dist. LEXIS 35041, at (S.D. Cal. Mar. 12, 2013)

1 (Moskowitz, J.) (citing *Karim-Panahi*, 839 F.2d at 626).

2 As for the time for bringing civil rights claims, such claims are subject to a
3 two-year statute of limitations. Cal. Code Civ. Proc. § 335.1; *Hacienda Valley*
4 *Mobile Estates v. City of Morgan Hill*, 353 F.3d 651, 655 n.2 (9th Cir. 2003); *see*
5 *also Usher v. City of Los Angeles*, 828 F.2d 556, 558 (9th Cir. 1987); *Taylor v.*
6 *Regents of Univ. of Cal.*, 993 F.2d 710, 711-12 (9th Cir. 1993). The statute of
7 limitations for these claims begins to run when the “plaintiff knows or had reason to
8 know” of the injury which is the basis of the action. *Morales v. Los Angeles*, 214
9 F.3d 1151, 1153-54 (9th Cir. 2000).

10 According to the Complaint, Stuart was detained by Sheriff’s deputies at the
11 family law seminar following a conversation between unidentified Sheriff’s
12 deputies and Judge Alksne. (Compl. ¶¶ 130-133.) The Complaint further alleges
13 Judges Goldsmith, McAdam, McKenzie, and Wohlfeil and Commissioner Lowe
14 were “organizers and panel members” at the seminar. (Compl. ¶¶ 25-29.) The
15 Complaint also summarily avers that all defendants conspired to support the so-
16 called “Stuart Assault.” (Compl. ¶¶ 137-140.) Moreover, the Complaint purports
17 to impose supervisory liability and principles of respondeat superior against Judges
18 Alksne and Trentacosta and Mr. Roddy. (Compl. ¶¶ 166, 176.)

19 Notwithstanding the Superior Court Defendants’ immunity from suit,
20 Plaintiffs’ civil rights claims are not warranted under existing law and have no
21 evidentiary support. *See* Fed. R. Civ. P. 11(b)(2)-(3). Plaintiffs’ attempt to impose
22 liability against Superior Court Defendants without satisfying the causation
23 requirement for Section 1983 claims is unwarranted. Indeed, no existing law
24 supports liability against Judge Alksne for speaking to Sheriff’s deputies prior to
25 Stuart’s arrest, and no existing law establishes liability against Judges Goldsmith,
26 McAdam, McKenzie, and Wohlfeil and Commissioner Lowe for organizing and
27 attending the Bar Association event.

28 ///

1 As to Plaintiffs’ conspiracy allegations, the Complaint avers that “Defendants
2 and each of them affiliated, came to a meeting of the minds, and agreed to support
3 the Stuart Assault in retaliation, abuse of process, and obstruction of justice as
4 described herein.” (Compl. ¶ 138.) “To allege a claim of conspiracy under § 1983,
5 Plaintiff must allege facts with sufficient particularity to show an agreement or a
6 meeting of the minds to violate his constitutional rights.” *Garcia v. Strayhorn*,
7 2013 U.S. Dist. LEXIS 135998, at *3 (S.D. Cal. Sep. 23, 2013) (Benitez, J.) (citing
8 *Margolis v. Ryan*, 140 F.3d 850, 853 (9th Cir. 1998); *Woodrum v. Woodward*
9 *County*, 866 F.2d 1121, 1126 (9th Cir. 1989)). Because there is no evidentiary
10 support for any purported conspiracy between any Superior Court Defendants and
11 the other defendants named in this action, Plaintiffs’ Complaint violates Rule
12 11(b)(3).

13 Plaintiffs’ inclusion of Judges Alksne and Trentacosta and Mr. Roddy in their
14 civil rights claims under the theory of respondeat superior is also unwarranted
15 under existing law. (See Compl. ¶¶ 166, 176.) Not only it is well-settled there is no
16 Section 1983 liability for alleged constitutional violations under the theory of
17 respondeat superior, but there is no evidentiary support for the proposition that any
18 of the judges under the alleged supervision of Judges Alksne and Trentacosta and
19 Mr. Roddy violated Plaintiffs’ civil rights at the seminar. See *Monell v. New York*
20 *City Dep’t of Soc. Servs*, 436 U.S. 658, 691 (1978); *Forrett v. Richardson*, 112 F.3d
21 416, 421 (9th Cir. 1997).

22 Plaintiffs’ claims under Sections 1985 and 1986 are equally frivolous.
23 Section 1985(1)’s protections only apply to federal officers, which Stuart is not.
24 *Canlis*, 641 F.2d at 717. As to Plaintiffs’ Section 1985(2) and (3) claims, there is
25 no evidentiary support for any purported conspiracy to commit the so-called “Stuart
26 Assault,” or facts establishing racial or class-based discrimination. Given the
27 absence of any facts supporting a violation of Section 1985, there is no legal or
28 factual basis for Plaintiffs’ Section 1986 claim.

1 In addition to the absence of factual or legal support for Plaintiffs’ civil rights
2 claims against the Superior Court Defendants relating to the so-called “Stuart
3 Assault,” these 13 claims arise out of an incident that occurred on April 15, 2010.
4 (Compl. ¶¶ 114, 142-150, 158-176, 180-215.) Because Plaintiffs did not commence
5 this action until August 20, 2013, Plaintiffs’ civil rights claims are barred by the
6 statute of limitations. Such claims are therefore clearly unwarranted under existing
7 law and in violation of Rule 11. (*See, e.g., Mir v. Little Company of Mary Hospital,*
8 *844 F.2d 646, 653 (9th Cir. 1988)* (affirming district court’s award of sanctions
9 under Rule 11 where plaintiff brought action “in the face of clear authority that
10 each claim was barred by procedural limitations[,]” including the statute of
11 limitations).

12 8. Plaintiffs’ Civil Rights Claims Concerning Stuart’s Dissolution
13 Proceeding Violate Rule 11.

14 Plaintiffs also attempt to allege three Section 1983 claims against certain
15 Superior Court Defendants arising out of Stuart’s dissolution proceeding. (Compl.
16 ¶¶ 216-257.) According to Plaintiffs, Judge Wohlfeil, who presided over Stuart’s
17 dissolution proceeding at one time, recommended that Dr. Doyne mediate custody
18 concerning Stuart’s son on April 10, 2008, and assured Stuart that Dr. Doyne was a
19 “trustworthy[,] competent mediator.” (Compl. ¶¶ 237, 239.) Plaintiffs allege Stuart
20 followed Judge Wohlfeil’s recommendation to use Dr. Doyne, and that Judge
21 Wohlfeil “retained administrative supervisory authority, oversight, and ability to
22 prevent or aid in preventing the breaches of duty, fraud, extortion, and abuse of [Dr.
23 Doyne]” (Compl. ¶ 239.) Judge Schall is alleged to have taken over Judge
24 Wohlfeil’s courtroom in December 2008, and to have continued with the same
25 purported oversight responsibilities until November 2009. (Compl. ¶¶ 240-41.)
26 Plaintiffs aver that Judges Wohlfeil and Schall permitted Dr. Doyne “to commit the
27 fraud, abuse of process, extortion, and terror against Stuart.” (Compl. ¶ 243.)

28 ///

1 As noted above, Plaintiffs had two years to file a Section 1983 action
2 challenging any of the Superior Court Defendants' orders or decisions concerning
3 Dr. Doyne in the dissolution proceeding. Given that Counts 17 through 19 of the
4 Complaint challenge conduct that occurred between April 2008 and November
5 2009, (Compl. ¶¶ 237, 240-41), Plaintiffs' filing of this action on August 20, 2013,
6 renders such claims untimely.

7 Plaintiffs' challenge of decisions rendered by Judges Wohlfeil and Schall is
8 also barred under the *Rooker-Feldman* doctrine. Pursuant to the *Rooker-Feldman*
9 doctrine, a federal district court lacks subject matter jurisdiction to hear an appeal
10 from the judgment of a state court. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*,
11 544 U.S. 280, 283-84 (2005); *see also Dist. of Columbia Court of Appeals v.*
12 *Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413,
13 415 (1923). Indeed, the district court lacks subject matter jurisdiction either to
14 conduct a direct review of a state court judgment or to scrutinize the state court's
15 application of various rules and procedures pertaining to the state case. *Samuel v.*
16 *Michaud*, 980 F. Supp. 1381, 1411-12 (D. Idaho 1996), *aff'd*, 129 F.3d 127 (9th
17 Cir. 1997). Because the crux of Counts 18 and 19 of the Complaint is that Judges
18 Wohlfeil and Schall erred in the recommendation to use Dr. Doyne as the mediator
19 in Stuart's dissolution proceeding, these claims are thus subject to dismissal under
20 the *Rooker-Feldman* doctrine. Plaintiffs' claims relating to Stuart's dissolution
21 proceeding therefore violate Rule 11, as they are unwarranted under existing law.

22 9. Plaintiffs' Lanham Act Claim For False Advertising Is
23 Unwarranted Under Existing Law And Thus Violates Rule 11.

24 In Count 21 of the Complaint, Plaintiffs attempt to assert a false advertising
25 claim against all defendants under the Lanham Act, 15 U.S.C. § 1125. (Compl. ¶¶
26 260-267.) Section 43(a) of the Lanham Act prohibits the use of false designations
27 of origin and false descriptions or representations in the advertising and sale of
28 goods and services. *Smith v. Montoro*, 648 F.2d 602, 605 (9th Cir. 1981); 15

1 U.S.C. § 1125(a). A false advertising claim requires the plaintiff to “allege
2 commercial injury based upon a misrepresentation about a product, and also that the
3 injury was ‘competitive,’ i.e., harmful to the plaintiff’s ability to compete with the
4 defendant.” *Barrus v. Sylvania*, 55 F.3d 468, 470 (9th Cir. 1995). Because the
5 Superior Court Defendants do not engage in the advertisement or sale of goods or
6 services, are not involved in interstate commerce, do not compete commercially
7 with anyone, let alone Stuart, and there is no factual or legal support for a Lanham
8 Act action against the Superior Court Defendants, Plaintiffs’ attempt to assert a
9 false advertising claim against the Superior Court Defendants violates Rule 11.

10 10. Plaintiffs’ Assertion Of RICO Claims Against The Superior
11 Court Defendants Violates Rule 11.

12 Plaintiffs also attempt to assert 12 RICO claims against various Superior
13 Court Defendants, the majority of which appear to arise out of the so-called “Stuart
14 Assault.” (Compl. ¶¶ 345-374.) “[T]he following are essential elements of any
15 civil RICO action: (1) the existence of a RICO ‘enterprise’; (2) the existence of a
16 ‘pattern of racketeering activity’; (3) a nexus between the defendant and either the
17 pattern of racketeering activity or the RICO ‘enterprise’; and (4) resulting injury to
18 plaintiff, in his ‘business or property.’” *Occupational-Urgent Health Sys., Inc. v.*
19 *Sutro & Co.*, 711 F. Supp. 1016, 1021 (E.D. Cal. 1989).

20 “To establish the existence of ... an enterprise, a plaintiff must provide both
21 evidence of an ongoing organization, formal or informal, and evidence that the
22 various associates function as a continuing unit.” *Odom v. Microsoft Corp.*, 486
23 F.3d 541, 552 (9th Cir. 2007) (internal quotation marks omitted). To satisfy
24 RICO’s pattern requirement, a plaintiff must allege two or more predicate acts. *Sun*
25 *Sav. & Loan Ass’n v. Dierdorff*, 825 F.2d 187, 193 (9th Cir. 1987). The plaintiff
26 must plead such acts with specificity and identify the individual actions of each
27 defendant sufficient to constitute a pattern of racketeering activity. *Blake v.*
28 *Dierdorff*, 856 F.2d 1365, 1370 (9th Cir. 1988).

1 As to the enterprise element, Plaintiffs allege the existence of three
2 enterprises purportedly involving Superior Court Defendants: (1) the “Domestic
3 Dispute Industry Criminal Enterprise (DDICE),” (2) the “San Diego Family Law
4 Community Domestic Dispute Industry Criminal Enterprise (SD-DDICE),” and (3)
5 the “Domestic Dispute Industry Intervention Advocate Criminal Enterprise (DDC-
6 IACE).” (Compl. ¶¶ 273-283.) With regard to RICO’s pattern requirement,
7 Plaintiffs identify 25 alleged statutory violations constituting “racketeering
8 activity,” which include fraud, witness tampering, and several crimes relating to
9 slavery. (Compl. ¶ 336.) Given there is no evidentiary support establishing either
10 an ongoing organization involving any Superior Court Defendant, or any conduct
11 amounting to a pattern of racketeering activity, Plaintiffs’ assertion of RICO claims
12 against the Superior Court Defendants violates Rule 11. (*See, e.g., Chapman &*
13 *Cole v. Itel Container Int’l B.V.*, 865 F.2d 676, 685 (5th Cir. 1989) (upholding
14 district court’s sanctions award under Rule 11 in connection with RICO claim).

15 11. Plaintiffs’ Pursuit Of Claims For Prospective Relief Without
16 Standing Violates Rule 11.

17 Finally, Plaintiffs attempt to assert a claim for prospective relief against all
18 defendants. (Compl. ¶¶ 392-396.) Plaintiffs generally ask the Court to enjoin
19 defendants from further alleged violations of their rights. (Compl. ¶ 396.)
20 Notwithstanding Plaintiffs’ inability to establish past violations by any Superior
21 Court Defendants, Plaintiffs also lack standing to pursue prospective relief.

22 To satisfy Article III standing in the context of injunctive and declaratory
23 relief, a plaintiff must show that he has suffered or is threatened with a “concrete
24 and particularized” legal harm, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560
25 (1992), coupled with “a sufficient likelihood that he will again be wronged in a
26 similar way.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). “To obtain
27 injunctive relief, a reasonable showing of a sufficient likelihood that plaintiff will
28 be injured again is necessary.” *Kruse v. Hawaii*, 68 F.3d 331, 335 (9th Cir. 1995)

1 (internal quotation marks and alteration omitted); *see also B.C. v. Plumas Unified*
2 *Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999). Plaintiffs’ attempt to obtain
3 prospective relief based exclusively on alleged past wrongs is unwarranted under
4 existing law and therefore violates Rule 11(b)(2).

5 **B. PLAINTIFFS’ VIOLATIONS OF RULE 11 WARRANT THE**
6 **IMPOSITION OF SANCTIONS**

7 As noted above, Rule 11 authorizes the imposition of “an appropriate
8 sanction on any attorney, law firm, or party that violated the rule or is responsible
9 for the violation.” Fed. R. Civ. P. 11(c)(1). Potential sanctions include “an order
10 directing payment to the movant of part or all of the reasonable attorney’s fees and
11 other expenses directly resulting from the violation” “if imposed on motion and
12 warranted for effective deterrence[.]” Fed. R. Civ. P. 11(c)(4). Local Civil Rule
13 83.1(a) similarly permits the “imposition of monetary sanctions or attorneys’ fees
14 and costs[.]”

15 “In a case like this, where the original complaint is the improper pleading, all
16 attorney fees reasonably incurred in defending against the claims asserted in the
17 complaint form the proper basis for sanctions.” *Gaskell v. Weir*, 10 F.3d 626, 629
18 (9th Cir. 1993) (affirming imposition of sanctions where the allegations in support
19 of a Section 1983 claim “were so baseless that the complaint was frivolous”). To
20 defend against the 32 claims asserted by Plaintiffs against the Superior Court
21 Defendants in their 1,300-page Complaint, the Superior Court Defendants were
22 forced to incur considerable expenses to prepare a motion to dismiss. (Doc. No.
23 16.) The Superior Court therefore respectfully requests the imposition of monetary
24 sanctions in the form of a fee award against Plaintiffs, jointly and severally, in the
25 amount of \$10,675.00. (*See Green Decl.* ¶ 4.)

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV.

CONCLUSION

For the reasons set forth above, the Court should grant the Superior Court's motion for sanctions and award the Superior Court reasonable attorneys' fees in the amount of \$10,675.00.

Dated: October 18, 2013

BEST BEST & KRIEGER LLP

By: /s/ Matthew L. Green

JAMES B. GILPIN
MATTHEW L. GREEN
Attorneys for Defendant
SUPERIOR COURT OF
CALIFORNIA, COUNTY OF SAN
DIEGO (erroneously sued as
SUPERIOR COURT OF SAN
DIEGO COUNTY)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the court’s CM-ECF system per Federal Rule of Civil Procedure 5(b)(2)(E). Any other counsel of record will be served by facsimile transmission and/or first class mail this 14th day of November 2013.

/s/ Matthew L. Green _____

LAW OFFICES OF
BEST BEST & KRIEGER LLP
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CA 92101